

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
<b>WXDJ Licensing, Inc.</b>	)	File Number: EB-07-IH-8189
Licensee of Station WXDJ(FM)	)	NAL/Acct. No.: 200932080010
North Miami Beach, FL	)	FRN #: 0004976874
	)	
<b>WSKQ Licensing, Inc.</b>	)	File Number: EB-07-IH-8469
Licensee of Station WSKQ(FM)	)	NAL/Acct. No.: 200932080011
New York, New York	)	FRN #: 0004976882

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** October 17, 2008

**Released:** October 17, 2008

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we assess separate monetary forfeitures in the amount of \$16,000 each against WXDJ Licensing, Inc. (“WXDJ Licensing”) and WSKQ Licensing, Inc. (“WSKQ Licensing”)(collectively, the “Licensees”) for their apparent willful violations of Section 73.1206 of the Commission’s Rules.<sup>1</sup> Both WXDJ Licensing and WSKQ Licensing are affiliates of Spanish Broadcasting System, Inc. As discussed below, we find that WXDJ Licensing and WSKQ Licensing each apparently violated the telephone broadcast rule by causing a telephone conversation to be recorded for future broadcast without giving prior notice to the individual being called of the intention to do so and by broadcasting the call at issue twice.

**II. BACKGROUND**

2. The Enforcement Bureau (“Bureau”) received three complaints (each a “Complaint”) alleging that on July 19, 2007, Station personnel prank-called a woman (the “call recipient”) claiming to be employees of a local hospital and told her that her husband’s and daughter’s dead bodies were at the hospital.<sup>2</sup> The Complaints also allege that the call recipient became hysterical when she received this information, at which point Station personnel told the call recipient that the call was a prank.<sup>3</sup>

<sup>1</sup> See 47 C.F.R. § 73.1206 (the “telephone broadcast rule”).

<sup>2</sup> See Complaint, Federal Communications Commission, dated July 19, 2007 (“WXDJ Complaint”) (associated with EB-07-IH-8189). See also Complaint, Federal Communications Commission, dated July 19, 2007 (“WSKQ Complaint”) (associated with EB-07-IH-8469); Complaint, Federal Communications Commission, dated July 20, 2007 (“WSKQ Complaint 2”) (associated with EB-07-IH-8469). Because none of the complainants has authorized disclosure of his/her name to the Licensees, each complainant will remain anonymous.

<sup>3</sup> See WXDJ Complaint at 1 (further alleging that Station personnel laughed at the call recipient’s hysterical response to the call, and that Station personnel did not inform the call recipient that they were recording the telephone conversation); see also WSKQ Complaint at 1; WSKQ 2<sup>nd</sup> Complaint at 2.

The Bureau issued a letter of inquiry (“LOI”) to WXDJ Licensing on October 19, 2007,<sup>4</sup> and LOIs to WSKQ Licensing on January 18, 2008 and July 8, 2008.<sup>5</sup> In their respective LOI responses, the Licensees state that Spanish Broadcasting System, Inc. contracted with a vendor, “Rubin Ithier,”<sup>6</sup> who recorded the call for a prank call feature show.<sup>7</sup> Each Licensee admits that Ithier initiated the call broadcast by its Station, that the call was made at the call recipient’s sister’s request, and that Ithier performed the prank.<sup>8</sup> Each Licensee also admits that on July 19, 2007, its Station broadcast the call.<sup>9</sup> In their respective LOI Responses, the Licensees admit that Mr. Ithier did not inform the call recipient that the call was being recorded for later broadcast until after the prank had been played and the call had been recorded already.<sup>10</sup> As the transcript demonstrates, the call recipient was not given notice prior to the call being recorded that it was being recorded for future broadcast.<sup>11</sup>

3. The LOI responses of each Licensee included a transcript of the broadcast call, which included, in pertinent part, the following:

Call Recipient: Hello?

Mr. Ithier: We’re calling from...[inaudible] Hospital...and we have a corpse here whose name is Francisco..Eh..[sic.] Do you know that man?

Call Recipient: Is this a joke or what?

Mr. Ithier: No – not a joke – I’m calling because we are trying to identify...identify the person.

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Mr. Ithier: The man was shot twice in the head.

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Call Recipient: Give me all the information where...I am so nervous...tell me where it is please.

<sup>4</sup> See Letter from Jennifer A. Lewis Hershman, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to WXDJ Licensing, Inc., dated October 19, 2007 (“WXDJ LOI”).

<sup>5</sup> See Letter from Jennifer A. Lewis, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission to WSKQ Licensing, Inc., dated January 8, 2008 (“WSKQ LOI”); Letter from Rebecca Hirselj, Assistant Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated July 8, 2008 (“WSKQ 2<sup>nd</sup> LOI”).

<sup>6</sup> Mr. Ithier’s birth name is Ramon Sierra. See Letter from WKSQ Licensing, Inc. to Judy Lancaster, Attorney, Investigations and Hearings Division, Enforcement Bureau, dated July 21, 2008 (“WSKQ Response to WSKQ 2<sup>nd</sup> LOI”); Letter from WKSQ Licensing, Inc. to Judy Lancaster, Attorney, Investigations and Hearings Division, Enforcement Bureau, dated July 21, 2008 (“Ithier Declaration”)(forwarding executed Declaration of Ramon Sierra a/k/a Ruben Ithier).

<sup>7</sup> See Letter from WXDJ Licensing, Inc. to Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission dated November 19, 2007, at 3 (“WXDJ LOI Response”); see also Letter from WSKQ Licensing, Inc. to Judy Lancaster, Esq., Investigations and Hearings Division, Enforcement Bureau, dated February 15, 2008 at 7 (“WSKQ LOI Response”); WSKQ Response to 2<sup>nd</sup> LOI at 2-3.; Ithier Declaration at 1.

<sup>8</sup> See WXDJ LOI Response at 3; WSKQ LOI Response at 6; WSKQ Response to 2<sup>nd</sup> LOI at 2, 3.

<sup>9</sup> See WXDJ LOI Response at 4; see also WSKQ LOI Response at 7. In its LOI response, WXDJ Licensing admits broadcasting the call at approximately 9:30 a.m. that day. See WXDJ LOI Response at 4. WSKQ Licensing admits broadcasting the call at approximately 7:30 a.m. and 9:30 a.m. EDT on July 19, 2007, and reveals that WXDJ Licensing also broadcast the call twice that day. WSKQ Response to 2<sup>nd</sup> LOI at 3.

<sup>10</sup> See WXDJ LOI Response at 3-4. See also WSKQ LOI Response at 7; WSKQ Response to 2<sup>nd</sup> LOI at 3, 7.

<sup>11</sup> See WXDJ LOI Response at Attached Translation at 5; WSKQ Response to 2<sup>nd</sup> LOI at Attached Translation at 5.

Mr. Ithier: On 182...in the Bronx.

Call Recipient: And what else?

Mr. Ithier: Well what happened is that we cannot turnover the corpses – we are only identifying and verifying the documents that were in the man’s pockets.

Call Recipient: He is my husband.

Mr. Ithier: Oh...he is your husband?

Call Recipient: Yes- Francisco is my husband.

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Mr. Ithier: Well what happened is that they are informing me here that it was a man who shot two times because of jealousy since this guy was going out with the man’s wife.

Call Recipient: How is it going to be...Oh good lord...but how is it going to be my God...and my daughter too?

Mr. Ithier: No no – I don’t know...yes actually we have two bodies...but I do not know if the little girl is the other one.

Call Recipient: But man or woman? Oh God!

Mr. Ithier: Yes – because there was another person who supposedly went running and was runned over [sic.] by a car.

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DJ: Two women – or both men?

DJ: Yes [laughter].

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Mr. Ithier: Yes – I’m told the little girl died.

Call Recipient: What?

Mr. Ithier: That the girl died killed by a car.

Call Recipient: My God [crying, screaming, inaudible conversation].

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Mr. Ithier: ...I’m Ruben from the Vacilon...this is a joke.

Call Recipient: My God – why did you do this to me?

Mr. Ithier: Kiss – I’m so sorry.<sup>12</sup>

### III. DISCUSSION

4. Under Section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>13</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.<sup>14</sup> The legislative history to Section 312(f)(1) of the Act

<sup>12</sup> WXDJ LOI Response at Attached Translation at 2-5; *see also* WSKQ LOI Response at 10-19.

<sup>13</sup> *See* 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>14</sup> 47 U.S.C. § 312(f)(1).

clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>15</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>16</sup> The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.<sup>17</sup> “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.<sup>18</sup> In order to impose such a penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.<sup>19</sup> The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has willfully or repeatedly violated the Act or a Commission rule.<sup>20</sup> As described in greater detail below, we conclude under this procedure that WXDJ Licensing and WSKQ Licensing are each apparently liable for a forfeiture in the amount of \$16,000 for their apparent willful and repeated failure to inform a called party that a call was being broadcast or recorded for later broadcast before so broadcasting or recording the telephone call.

5. Section 73.1206 of the Commission’s Rules requires that *before* recording a telephone conversation for later broadcast, a licensee must inform any party to the call of its intention to broadcast the conversation, except where such party is aware, or may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be broadcast.<sup>21</sup> The Commission will presume such awareness only where “the other party to the call is associated with the station (such as an employee or part-time reporter), or where the other party originates the call and it is obvious that it is in connection with a program in which the station customarily broadcasts telephone conversations.”<sup>22</sup>

6. Section 73.1206 reflects the Commission's longstanding policy that prior notification is essential to protect individuals' legitimate expectation of privacy and to preserve their dignity by avoiding nonconsensual broadcasts of their conversations.<sup>23</sup> The Commission specifically favored an individual’s privacy interest when balancing it against a broadcaster’s interest in enhancing program appeal with increased spontaneity and entertainment value using telephone conversations. The Commission found that such enhancement was not sufficiently critical as to justify intruding on individual privacy.<sup>24</sup> The Commission has held that the prior notification requirement ensures the protection of an individual's "right to answer the telephone without having [his or her] voice or statements transmitted to the public by a

<sup>15</sup> See H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>16</sup> See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>17</sup> See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 10 (2001) (“*Callais Cablevision*”) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage).

<sup>18</sup> See *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388 ¶ 5; *Callais Cablevision, Inc.*, 16 FCC Rcd at 1362 ¶ 9.

<sup>19</sup> See 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>20</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002) (forfeiture paid).

<sup>21</sup> See 47 C.F.R. § 73.1206.

<sup>22</sup> *Id.*

<sup>23</sup> See *Amendment of Section 1206: Broadcast of Telephone Conversations, Report and Order*, 3 FCC Rcd 5461, 5463-64 (1988) (“1988 Order re the Broadcast of Telephone Conversations”); *Station-Initiated Telephone Calls Which Fail to Comply With Section 73.1206 of the Rules*, Public Notice, 35 FCC 2d 940, 941 (1972); *Amendment of Part 73 of the Commission's Rules and Regulations with Respect to the Broadcast of Telephone Conversations*, Report and Order, 23 FCC 2d 1, 2 (1970); see also *WXDJ Licensing, Inc.*, Forfeiture Order, 19 FCC Rcd 22445 (Enf. Bur. 2004) (assessing a forfeiture for failure to inform the called party that their telephone conversation would be broadcast or recorded for later broadcast before so broadcasting or recording them; forfeiture paid).

<sup>24</sup> See *1988 Order re the Broadcast of Telephone Conversations*, 3 FCC Rcd at 5464.

broadcast station" live or by recording for delayed airing.<sup>25</sup> Consistent with this reasoning, the Commission has defined "conversations" broadly "to include *any* word or words spoken during the telephone call," and specifically has rejected arguments that "utterances made by parties called in answering the phone" are not subject to the rule's prior notification requirement.<sup>26</sup> Thus, aside from the narrowly-tailored exceptions noted above, neither of which is applicable here, before any portion of a telephone conversation is recorded for later broadcast or before any portion of a telephone conversation is initiated for simultaneous broadcast, the licensee must inform the other party that the conversation will be recorded for broadcast purposes or will be broadcast live.

7. As the facts reflect, by failing to comply with the notice requirement, both WXDJ Licensing and WSKQ Licensing violated Section 73.1206 of the Commission's Rules. Each Licensee asserts that its independent contractor obtained the call recipient's permission to broadcast the call before the Station broadcast it but each Licensee acknowledges such permission was requested *after* the telephone conversation had been recorded.<sup>27</sup> The failure to inform the call recipient *prior* to recording the call that it was intended for broadcast is an apparent violation of Section 73.1206. Here, the independent contractor, based on its contract with the Licensees and without prior notice to the call recipient, proceeded to record the recipient's emotional distress at learning that her husband and daughter were dead. At the end of the conversation, the independent contractor informs the call recipient that her husband and daughter were not dead, and that it was just a "joke."<sup>28</sup> This is the type of behavior Section 73.1206 was enacted to sanction – entertainment at the expense of an individual's right to privacy.<sup>29</sup>

8. We further find that the call's origination and recording by an independent contractor, rather than the Licensees themselves, does not exculpate WXDJ Licensing or WSKQ Licensing from liability.<sup>30</sup> The "Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors,"<sup>31</sup> and the Commission has "consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations."<sup>32</sup> Nothing in the record here suggests that this precedent does not or should not apply. Rather, the independent contractor had a contract to

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<sup>25</sup> See *id.* at 5463.

<sup>26</sup> See *Heftel Broadcasting-Contemporary, Inc.*, 52 FCC 2d 1005, 1006 (1975) (holding that "conversation" was defined for the purpose of Section 73.1206 as including any word or words spoken during the telephone call and imposing \$2,000 forfeiture for failure to provide notice prior to recording any conversation).

<sup>27</sup> See *supra*, note 12.

<sup>28</sup> See *supra* paragraph 3.

<sup>29</sup> See *supra* notes 23-25 (citing authorities).

<sup>30</sup> See *KOFI, Inc.*, Forfeiture Order, 20 FCC Rcd 17886, 17888 (Enf. Bur., Investigations & Hearings Div. 2005) (holding that liability on employee or independent contractor's part does not excuse licensee from liability for violating telephone broadcast rule and assessing \$4,000 forfeiture; forfeiture paid).

<sup>31</sup> *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-864 (2002). See also *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34 (1991) (holding that a company's reliance on an independent contractor to construct a tower in compliance with FCC rules does not excuse that company from a forfeiture); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972) (holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer); *Petracom of Joplin, L.L.C.*, Forfeiture Order, 19 FCC Rcd 6248 (Enf. Bur. 2004) (holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list).

<sup>32</sup> *American Paging, Inc. of Virginia*, Notice of Apparent Liability for Forfeiture, 12 FCC Rcd 10417, 10420 (WTB 1997) (quoting *Triad Broadcasting Company, Inc.*, 96 FCC 2d 1235, 1244 (1984)).

provide prank call feature programming,<sup>33</sup> suggesting that the independent contractor was acting pursuant to a regular and ongoing agreement condoning the type of practice for which we find each Licensee apparently liable here. For the foregoing reasons, we find that each Licensee apparently willfully and repeatedly violated Section 73.1206 by broadcasting each recorded call twice.

9. The Commission's forfeiture guidelines establish a base forfeiture amount of \$4,000 for the unauthorized broadcast of a telephone conversation.<sup>34</sup> In addition, the Commission's rules provide that base forfeitures may be adjusted based upon consideration of the factors enumerated in Section 503(b)(2)(E) of the Act<sup>35</sup> and Section 1.80(a)(4) of the Commission's rules, which include "the nature, circumstances, extent, and gravity of the violation . . . and the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>36</sup> We note that Spanish Broadcasting Systems, Inc., the parent company of each Licensee, has a history of violating the Commission's rules, including a prior violation by WXDJ Licensing of the telephone broadcast rule at issue here.<sup>37</sup> We also note that each Licensee broadcast the recorded call twice, increasing the egregiousness of the violations.<sup>38</sup> Finally, we also must consider each Licensee's ability to pay.<sup>39</sup> Having considered the record in this case and the statutory factors identified above, we find that WXDJ Licensing and WSKQ Licensing are each apparently liable for a forfeiture in the amount of \$16,000.<sup>40</sup>

#### IV. ORDERING CLAUSES

10. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,<sup>41</sup> and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's rules,<sup>42</sup> that

<sup>33</sup> See WXDJ Response at 3 ("Rubén Ithier, the owner of a vendor who we contract to create 'caistes' (akin to 'you fell for it')...initiated...the July 19<sup>th</sup> call"); see also WSKQ Response at 6; WSKQ Response to 2<sup>nd</sup> LOI at 3.

<sup>34</sup> See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17115 (1997), recons. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. §1.80.

<sup>35</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>36</sup> 47 C.F.R. § 1.80(a)(4).

<sup>37</sup> See WSKQ LOI Response at 2; *WXDJ Licensing, Inc.*, 19 FCC Rcd at 22447 (assessing \$3,500 forfeiture against the Licensee for violating telephone broadcast rule by recording a call without disclosure to the call recipient and later broadcasting it) (forfeiture paid). See also *Citicasters Licenses, L.P.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 1633, 1636 (Enf. Bur., Investigations & Hearings Div. 2007) (assessing \$10,000 forfeiture for violation of Section 73.1206 based, in part, on the licensee's prior history of violating the rule) (forfeiture paid).

<sup>38</sup> See *Citicasters Licenses, L.P.*, 22 FCC Rcd at 1636 (assessing \$10,000 forfeiture for violation of Section 73.1206 based, in part, on the licensee's prior history of violating the rule and ability to pay) (forfeiture paid). See also *KOFI, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 5995, 5997 (Enf. Bur., Investigations and Hearings Div., 2005), *forfeiture reduced on other grounds*, 20 FCC Rcd 17886 (Enf. Bur., Investigations and Hearings Div, 2005) (forfeiture paid) (assessing \$6000 forfeiture for violation of Section 73.1206 based on licensee's repeated broadcast of an improperly recorded conversation).

<sup>39</sup> WXDJ Licensing and WSKQ Licensing are owned by Spanish Broadcasting System, Inc., a company that generates significant revenues. In 2006, Spanish Broadcasting System, Inc., had earned \$176,931,000 in net revenue. See Spanish Broadcasting System, Inc., 2006 Annual Report on Form 10-K, Securities and Exchange Commission at 42 (filed March 16, 2007). The Commission directed, in the Forfeiture Policy Statement, that forfeitures should not be simply an affordable cost of doing business. *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-101.

<sup>40</sup> See *supra* notes 35-36, 38 (citing authority); *Clear Channel Broadcasting Licenses*, Notice of Apparent Liability for Forfeiture, 17 FCC Rcd 5893, 5894 (Enf. Bur. 2002) (imposing \$6,000 forfeiture for violation of Section 73.1206 based on the licensee's prior history of violating that rule) (forfeiture paid).

<sup>41</sup> See 47 U.S.C. § 503(b).

WXDJ Licensing, Inc. and WSKQ Licensing, Inc. are each hereby **NOTIFIED** of their **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$16,000 each for violating Section 73.1206 of the Commission's rules.<sup>43</sup>

11. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules, that within thirty (30) days of the release date of this NAL, WXDJ Licensing, Inc. and WSKQ Licensing, **SHALL EACH PAY** the full amount of the proposed forfeiture issued against them or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of each forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. Each payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment[s] by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Each Licensee shall also send electronic notification on the date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Rebecca.Hirselj@fcc.gov, Kenneth.Scheibel@fcc.gov, Anjali.Singh@fcc.gov and Judy.Lancaster@fcc.gov.

13. Each response, if any, shall be mailed to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 4-C330, Washington D.C. 20554, and **MUST INCLUDE** the NAL/Account Number referenced above. To the extent practicable, any response regarding WXDJ Licensing should also be sent by e-mail to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and Anjali.Singh@fcc.gov. To the extent practicable, any response regarding WSKQ Licensing should also be sent by e-mail to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Rebecca.Hirselj@fcc.gov, and Judy.Lancaster@fcc.gov.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. **IT IS FURTHER ORDERED**, that each Complaint filed **IS GRANTED** to the extent indicated herein and **IS OTHERWISE DENIED**, and each Complaint proceeding **IS HEREBY TERMINATED**.<sup>44</sup>

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(Continued from previous page)

<sup>42</sup> See 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1206.

<sup>43</sup> See 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.1206.

<sup>44</sup> For purposes of this forfeiture proceeding initiated by this NAL, WXDJ Licensing and WSKQ Licensing shall be the only parties to this proceeding.

16. **IT IS FURTHER ORDERED**, that a copy of this NAL shall be sent, by Certified Mail/Return Receipt Requested, to WXDJ Licensing, Inc. at its address of record, to WSKQ Licensing, Inc. at its address of record, and to Licensees' counsel, Bruce A. Eisen, Kaye Scholer LLP, 901 Fifteenth Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Hillary S. DeNigro  
Chief, Investigations and Hearings Division  
Enforcement Bureau